

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Request to Add Private Address Forwarding To the Market
Dominant Product List

Docket No. MC2013-60

**PETITIONER'S MOTION FOR DECLARATIONS, FURTHER PROCEEDINGS,
DISCLOSURE, AND APPEARANCE;
OR IN THE ALTERNATIVE, FOR SUSPENSION PENDING FOIA APPEALS**

December 20, 2013

Summary, motion, and alternative motion

Currently, approving or denying my request to add Private Address Forwarding (PAF) to the Mail Classification Schedule (MCS) would be premature. There is no evidence in the record *whatsoever* based on which the Postal Regulatory Commission (PRC or Commission) can make the statutorily mandated determinations about my proposal.

However, there *is* clear evidence on the record that the United States Postal Service (USPS) has pertinent evidence which would substantially inform the Commission, myself, and the public about whether PAF would be feasible, meet other statutory criteria for a change to the MCS, etc. The USPS has steadfastly and unlawfully refused to cooperate, produce their evidence, or even to actually comment directly on the merits of my proposal — despite their having evidence clearly pertinent to my proposal.

Given the Commission's knowledge of evidence on which it could make a merit-based determination, and its ability to obtain that evidence by subpoena and other discovery, the Commission is obliged to do so. If it does not, this proceeding will be a meaningless sham and set a precedent that effectively nullifies Congress' intent in passing the [Postal Accountability and Enforcement Act of 2006](#) (PAEA).

Therefore, the only reasonable resolution at this stage is for this request to proceed *after*

the relevant evidence whose existence is referenced or implied by the USPS has been obtained and put on the record, so that the Commission can make a reasonable determination (or institute further proceedings) based on actual evidence, and the public can comment on the feasibility and/or desirability of my proposal based on the same.

Accordingly, I hereby move that the PRC:

1. Declare that the PRC, not the USPS, has both exclusive and mandatory statutory duty to determine whether a proposed change to the MCS meets the requirements given in [39 USC 3642\(b\)](#);
2. Declare and interpret that the term "position" in [39 CFR 3020.55\(a\)](#) does not give the USPS any authority to restrict the PRC or PAEA by espousing a position or view of mere obstinacy, but rather was intended by the PRC in its [Order 43](#) and [Order 26](#) to merely reiterate the goals and standards presented in title 39;
3. Declare that the USPS, in responding to a request under [39 CFR 3020.54](#), must *at minimum* argue the merits specified in [39 USC 3642\(b\)](#) and [39 CFR 3020.52](#);
4. Declare that the USPS exceeded its discretion in creating [39 CFR 265.9\(g\)\(3\)\(v\)](#), and that any additional requirement to judge "personal interest", separate from a requirement for the existence of a public interest, is not compatible with [5 USC 552\(a\)\(4\)\(A\)\(iii\)](#);
5. Declare that the USPS' statements on the record show that the USPS possesses evidence material to making a determination in this proceeding, and that the USPS has so far withheld that evidence;
6. Institute further proceedings, under [39 CFR 3020.56](#);
7. Provide for a period of discovery to obtain further information and order the USPS to produce relevant documents¹, under [39 CFR 3020.56\(a\)](#) & [\(d\)](#);
8. Subpoena the USPS to produce relevant documents, under [39 CFR 3001.27](#), [39 CFR 3005.11](#), and [39 CFR 3005.13](#);
9. After receiving the relevant evidence, schedule a hearing on the record for further

¹ as discussed in my [2013-10-21 motion](#) and [2013-10-29 response](#) for an order of disclosure

- consideration of the request, under [39 CFR 320.56\(b\)](#) and [39 CFR 3001.17\(a\)\(5\)](#);
10. Permit me to attend remotely at all meetings on this request, under [39 CFR 3001.43\(a\)\(1\)](#); and
11. Permit me to appear remotely² and present oral argument in all further proceedings or hearings under this request, under [39 CFR 3001.37\(a\)](#).

If the PRC denies motions 7-8, I move that the PRC stay this proceeding, and not make any decision under [39 CFR 3020.56](#), pending my appeal of the USPS' denial of aspects of my Freedom of Information Act (FOIA) request for the same USPS documents.

I would strongly prefer that the PRC itself order further proceedings with discovery, as I believe that this proceeding and the PRC's subpoena powers would be a more appropriate and powerful venue for disclosing and considering those documents than the FOIA.

Importance of this proposal as a precedent-setting test case

The PAEA granted a new power to all "users of the mails": that they are able to propose "new products" for the USPS to provide. My proposal for Private Address Forwarding (PAF) is the first ever to be made under this statute.³ As such, "the review process established by the Commission may be precedent setting for all future proposals".⁴

Unlike the members of commenter PostCom, I "do not have access to decision makers at the Postal Service".⁵ I cannot lobby upper level USPS managers to add a new product. I

² preferably via video conference

³ [Public Representative's comments, 2013-09-24](#)

⁴ *ibid.*

⁵ [Public Representative's comments, 2013-11-18](#)

only have the power that Congress gave to me in [PAEA §203](#) — to propose a product before the Commission using the process enacted in [39 USC 3642](#).

I am an ordinary user of the mail, not a commercially interested party or PRC regular, who has independently invented a product that I believe would be of significant benefit.⁶ I proposed that the PRC add PAF to the MCS in good faith, with the expectation that the USPS would likewise "consider the proposal, and potentially contact and negotiate with"⁷ me in good faith, rather than in an adversarial manner.

Unfortunately, the USPS has completely failed to do so. They have made no attempt whatsoever to cooperate with me on this proposal, discuss how it might be implemented, give counterproposals, or provide informal discovery. Their responses have raised concerns — ones which I addressed in my amended proposal — but have assiduously avoided actually responding on the merits.

The Public Representative is extremely polite in saying that "the Postal Service in effect appears to be discouraging anyone, other than itself, from promoting proposals for new products."⁸ I will be more blunt: the USPS' official position in this matter, as expressed in its filings, has been that only the USPS should be allowed to propose new products; that only the USPS should determine whether a proposed product meets statutory criteria; that there should be no meaningful, fair, actual review and due process in this proceeding; and that the PRC should completely defer to USPS' managerial decisions.

I find this extremely disappointing; my intent was to openly and cooperatively propose an innovative service that the USPS could feasibly implement, which would significantly benefit the general public and provide additional revenue to the USPS. I hoped that the

⁶ [Request, 2013-09-18](#), and [amended request, 2013-11-04](#). As the USPS noted in their [2013-10-16 comments](#), the USPS has previously considered (but failed to act on) similar ideas, dating back a decade — a fact which goes to substantiate a presumption that my proposal is at least plausibly feasible and beneficial.

⁷ [Public Representative's comments, 2013-09-24](#)

⁸ [Public Representative's comments, 2013-11-18](#)

USPS would respond in kind, but they have not. Instead, their "position" directly contradicts the clear intent of Congress to grant ordinary users of the mails the ability to *effectively* propose new products, and accepting it would violate my due process rights.

The Commission is thus faced with a precedent-setting question: will it abrogate its mandate to *regulate* the USPS and merely rubber stamp a position of "we don't want to", or will it actually make a determination on the merits, based on available evidence?

Procedural standards and applicable law

The PRC is an administrative "agency" as defined in the Administrative Procedure Act (APA) [5 USC 551\(1\)](#). This proceeding is a "rulemaking" as defined in [5 USC 551\(5\)](#), as it may result in a change to the MCS, which is a "rule". As this is not currently a "hearing on the record", the statutory standard for the PRC's decision is [5 USC 553\(c\)](#), which provides that the PRC shall "consider[] the relevant matter presented".

Under 553(c), the PRC generally has broad administrative discretion in its upcoming review under [39 CFR 3020.55](#) about how to proceed with my proposal. However, the PRC's discretion is not unlimited. Even in an informal rulemaking proceeding like this, the PRC is required to give *meaningful* review. A mere sham proceeding would be a violation of my constitutional right to due process.

In relevant part, [5 USC 706\(2\)](#) holds that the PRC's decision may not be (A) "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; (C) "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"; (D) "without observance of procedure required by law"; or (F) "unwarranted by the facts[]".

Standing to request new products, and prevailing law

In 1970, Congress enacted the Postal Reorganization Act (PRA), creating [39 USC 403\(a\)](#), which gave the USPS a mandate to "plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees".

In 2006, Congress enacted the PAEA, *amending* large swaths of the previous text of title 39. Because the PAEA was enacted after the PRA, to the extent that the PAEA conflicts with the PRA, the PAEA prevails.⁹ The PRC must give "real and substantial effect"¹⁰ to all portions of the PAEA — *especially* those which clearly amended previous sections of title 39.

The USPS claims, in its [2013-10-16 comments](#), that [403\(a\)](#) implies that "[t]he planning and development of postal services is *reserved* to the Postal Service" (emphasis added). The USPS is plainly mistaken as a matter of law. The PRA does not give any *exclusive* authority to plan or develop postal services, nor does it give the USPS any immunity from orders by a regulatory agency like the PRC regarding the development of new products or make their decisions more accountable. Rather, [403\(a\)](#) simply commands the USPS to develop and provide such services when required.

Moreover, the PAEA explicitly *revoked* unilateral decision-making authority from the USPS. PAEA §504 amended [39 USC 401\(2\)](#)'s grant of USPS authority "to adopt, amend, and repeal such rules and regulations" from "as it deems necessary to accomplish the objectives of this title" to "not inconsistent with this title, as may be necessary in the execution of its functions under this title and such other functions as may be assigned to the Postal Service under any provisions of law outside of this title". This language is unmistakably clear: Congress intended to *restrict* the USPS, and to subjugate the USPS'

⁹ [State v. Coolidge, 282 N.W.2d 511, \(Minn. 1979\)](#): "There may be instances in which a new statute does not replace the entire subject matter of an existing statute but provisions in the two statutes are irreconcilable. In such a case, the more recent statute prevails."

¹⁰ [Stone v. INS, 514 U.S. 386, 397 \(1995\)](#) "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect."

[Montclair v. Ramsdell, 107 U.S. 147, 152 \(1883\)](#) "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."

ability to control its own rules and regulations to the PRC's authority as well as to the mandates of the PAEA.

PAEA §203 amended [39 USC 36](#) to grant *new* authority to users of the mails — not just the USPS or PRC, as was previously the case — to propose "new products".¹¹ Again, this is an utterly unambiguous statement of congressional intent to empower ordinary users of the mails such as myself to propose *new* products, such as PAF.

The USPS and PostCom have claimed that the USPS has standing superior to mine to propose a new product, or that [39 USC 3642](#) restricts my ability to merely proposing *modifications* of existing products. This contradicts a plain reading of the law.

The USPS, like me, is permitted to *request* that the PRC change the MCS "by adding new products to the lists, removing products from the lists, or transferring products between the lists". There is no distinction made in [39 USC 3642\(a\)](#) between adding a new product or making other changes. Likewise, it lists a "request of the Postal Service or users of the mails" side by side, with exactly the same authority.

In short, the USPS' claim to *exclusivity* in the proposal and development of new postal products is completely unfounded in current law.

PRC's subpoena powers

The PRC has extensive power to command the USPS to produce documents relevant to a PRC proceeding such as this, explicitly granted by the PAEA.

[39 CFR 3001.27\(a\)](#) permits discovery of documents relevant to a PRC proceeding; [39 CFR 3005.11\(a\)](#) authorizes "the Chairman [and] any designated Commissioner" to issue subpoenas to the USPS for [\(c\)](#) "the production of documentary or other evidence with

¹¹ [Chevron, U.S.A., Inc. v. Natural Resources Defense Council \(468 U.S. 1227\)](#) "First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."

respect to any proceeding"; and [39 CFR 3005.13](#) authorizes the PRC to issue subpoenas in response to a third party request "in any proceeding". These all apply to my request for discovery in this motion.

If the USPS contends that relevant documents are otherwise exempt from disclosure or protectable, [39 CFR 3007.3](#) authorizes the PRC (on its own volition or on request, such as this motion) to request such materials anyway and to make them public. Furthermore, [39 CFR 3007.40](#) authorizes the PRC to give me access to non-public materials if I abide by protective conditions given in [39 CFR 3007 Appendix A](#).

I hereby state my willingness to execute such a statement of compliance. However, I also request under [39 CFR 3007.33](#) that the PRC make all such materials public, as disclosure thereof is of very little likelihood to cause commercial injury to the USPS, but would dramatically increase transparency in this proceeding, and these are the only considerations permitted by that regulation.

Non-arbitrary, fact-based decision; presumption of evidence in my favor

The PRC is required to make a decision that is reasoned, not arbitrary, and based on facts.¹²

The facts are simple: the USPS' comments clearly state¹³ that they already have evidence that is directly relevant to a determination of the merits of my proposal. I am not reasonably

¹² [Motor Vehicle Manufacturers Association of the United States, Inc. v. State Farm Mutual Automobile Insurance 463 U.S. 29, 43 \(1983\)](#) "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made' ... to pass muster under the 'arbitrary and capricious' standard"

[Citizens to Preserve Overton Park v. Volpe \(401 U.S. 402\)](#) "must consider whether the decision was based on a consideration of the relevant factors"

[City of Kansas City v. Department of Housing & Urban Development, 923 f.2d 188, 189 \(D.C. Circuit 1991\)](#) "'Arbitrary and capricious' review ... demands evidence of reasoned decisionmaking at the agency level."

¹³ *ibid.* footnote 1 above

able to produce similar evidence independently.

Far from engaging in good faith in even informal discovery, as mandated by [39 CFR 3001.25\(b\)](#), the USPS has so far demonstrated bad faith and repeatedly violated clear law in its attempts to avoid discovery, without satisfactory explanation.

In its [reply](#) to my [motion for discovery](#), the USPS was purely evasive. It did *not* deny having responsive documents. Nor did it deny the *accuracy* of the plain inference that their having a decade's worth of similar proposals — two patented, one trademarked — have produced documents that would substantiate the feasibility of my proposal. Its response was completely without satisfactory explanation for its refusal to disclose those documents.

USPS' response to my FOIA request

On 2013-10-18, I requested under the Freedom of Information Act (FOIA) that the USPS produce the same documents.¹⁴ My request clearly requested that they provide the documents and response digitally ([5 USC 552\(a\)\(3\)\(B\)](#) & [39 CFR 265.9\(h\)\(3\)](#)); that they waive fees, as the documents are of clear public interest ([5 USC 552\(a\)\(4\)\(A\)\(iii\)](#) & [39 CFR 265.9\(g\)\(3\)](#)); and that they process it on an expedited basis, as the documents are relevant to this ongoing proceeding ([5 USC 552\(a\)\(6\)\(E\)](#) & [39 CFR 265.7\(g\)](#)).

The USPS unlawfully violated *all* of the above statutes — by failing to respond within 10 days, by failing to make a fee waiver determination, and by responding to me by physical mail and quoting "per page" duplication fees that are completely inapplicable to digital documents. Its response — and its proposed search fees — seem to have been intended to chill my attempts to obtain records in the public interest.

In its (unlawfully delayed) 2013-12-12 final determination on administrative appeal of the expedited and public interest parts of my FOIA request, the USPS gave no reason whatsoever for denying my expedited processing (and in particular did not acknowledge the time limits of this proceeding).

¹⁴ see all relevant correspondence attached

In their appeal determination on my request for public interest fee waiver, they said "this Office considers the following factors: (1) the relation of the records to the operations or activities of the Postal Service; (2) the informative value of the information to be disclosed; (3) any contribution to an understanding of the subject by the general public likely to result from disclosure; (4) the significance of that contribution to the public understanding of the subject; (5) the nature of the requester's personal interest, if any, in the requested disclosure; and (6) whether the disclosure would primarily be in the requester's commercial interest."

However, in rejecting my request, they did *not* consider those factors; the *only* basis which they gave was that "it appears that the requested records would primarily be used within the limited context of an administrative hearing in which you have an interest", relying only upon "*Brunsilus v. DOE* ... emphasizing that '[a]ppellant's indigence and his private litigation interest are not valid bases for waiving fees under FOIA'."

First and most importantly, this response unlawfully fails to even *consider* points 1-4 (reiterated mere paragraphs above). It dismisses this proceeding as merely an "administrative hearing".¹⁵ It is completely undeniable that there is a *statutorily defined* public interest in this proceeding. Indeed, the PRC is quite possibly *unique* among all regulatory agencies, in that it has "an officer ... in *all* public proceedings who shall represent the interests of the general public" ([39 USC 505](#), emphasis added). The Congress, again in the PAEA, explicitly created this provision — thereby *defining* this proceeding, and all matters in it, to be of "public interest" within the meaning of [5 USC 552\(a\)\(4\)\(A\)\(iii\)](#) & [39 CFR 265.9\(g\)\(3\)](#).

The USPS' response also completely misrepresents [552\(a\)\(4\)\(A\)\(iii\)](#). [552\(a\)\(4\)\(A\)\(iii\)](#) says that a "public interest" waiver should not be "primarily in the commercial interest of the requester". I have repeatedly, both in my PRC filings and my FOIA request, *explicitly* disclaimed any commercial interest whatsoever in the outcome of this proceeding, and the

¹⁵ which is legally incorrect; this is not a "hearing on the record", but rather a rulemaking proceeding under [5 USC 553\(c\)](#)

USPS has given no basis on which to doubt my claim.

The USPS' sole case law in support of its refusal, *Brunsilius*, was a case involving a civil litigant requesting documents that would aid in his suit against the Department of Energy; the D.C. District Court denied his FOIA public interest waiver request because (a) Brunsilius claimed indigence as a basis for the request, which is not a statutorily enumerated basis for FOIA fee waiver, and (b) Brunsilius was unable to disseminate resulting documents to the public. I did not claim indigence as any part of my request for waiver, so that part is moot. As for dissemination, I promised that I would enter all resulting documents into the public record of this proceeding. As a matter of law, doing so *definitionally* constitutes dissemination to the public, so the USPS' reliance on *Brunsilius* fails there as well. The court in *Brunsilius* did *not* use "personal interest" as any part of its opinion.

It is true that I have a personal interest in seeing my idea come to fruition, in using PAF service myself, and in having my due process right respected. However, nowhere does [5 USC 552](#) permit a petitioner's "personal interest" as a consideration (it merely requires there to be a "public interest"); as such, the USPS exceeded its authority when passing [39 CFR 265.9\(g\)\(3\)\(v\)](#). Permitting such a basis for refusal would essentially permit refusal of *all* FOIA requests, which are always based on *some* "personal interest" of the requester. Even in other case law (e.g. [Strauss v. IRS, 516 F. Supp. 1218, 1222 n.7 \(D.D.C. 1981\)](#)), "personal" interest is mentioned only as being the lack of the enumerated requirement of "public interest", not as a *separate* negative requirement.

Nor does even [39 CFR 265.9](#) itself permit "personal interest" as a sole basis for refusal, but rather as one of *several* factors. The USPS completely failed, without any justification, to even *attempt* to address any of the other factors of the determination, which they are mandated to do by law.

I recognize that the PRC is not the D.C. Court of Appeals, to whom I will direct my appeal of the USPS' unlawful denial of my FOIA request should the PRC not itself order discovery of

those documents with its subpoena powers, as I have moved. However,

1. as discussed below, the PRC should take official notice of the USPS' (unlawful) refusal of my request for documents of public interest in this proceeding as part of its entire pattern of intransigence in these proceedings, and construe that as creating a presumption that the USPS does retain documents that would advance my argument as to the feasibility and desirability of PAF;
2. the PRC does have the authority under [39 USC 401\(2\)](#) to grant my motion to declare that [39 CFR 265.9\(g\)\(3\)\(v\)](#) was an unlawful action by the USPS; and
3. the PRC has the authority to grant my alternative motion to stay this proceeding pending my appeal of USPS' denial of my FOIA request, should it decide not to go forward under its own subpoena powers.

USPS' intransigence creates a presumption of evidence in my favor

The USPS' intransigence in refusing, unlawfully and without satisfactory explanation, "to testify [or produce] with respect to material facts peculiarly within [their] knowledge ... gives rise to an inference that [their] testimony [or evidence], if it had been elicited, would have been unfavorable to [their] cause or defense" (29 Am. Jur. 2d Evidence (1994) § 257, "absent witness rule"). "[A]n inference may be drawn that withheld evidence would be unfavorable if it is relevant evidence which would properly be part of a case is within the control of the party whose interest it would naturally be to produce it." (ibid., § 245, "withheld evidence rule"). "[T]he production of weaker evidence, when stronger might have been produced, lays the producer open to the suspicion that the stronger evidence would have been to [their] prejudice" ([Runkle v. Burnham, 153 US 216 \(1894\)](#), citing [Clifton v. United States, 45 US 242 \(1846\)](#)).

Contrary to the USPS' claims in its [2013-10-28 opposition](#) to my prior motion for discovery, I have not at this stage requested that the USPS initiate any new investigatory proceedings; that they limit documents produced to ones which they believe to be in a final stage; or anything of the sort. I have simply requested documents that the USPS *already*

possesses, and which are material to any non-arbitrary, fact-based determination on my proposal.

In their [initial comments](#) on my proposal (2013-10-16), the USPS raised various questions that would need to be considered — considerations which I generally agreed with, and largely responded to with reasonable mitigations, in my [amended proposal \(2013-11-04\)](#).

The USPS did not, however, actually *address* any of the questions they raised (nor my responses in my amended proposal). They stated no facts that argued against the feasibility of my proposal, nor did they give any facts materially disputing my argument that PAF would substantially benefit the public and the USPS, and fulfill *all* of the requirements in the law (see below). If anything, their comments only *supported* my argument, by demonstrating that the USPS itself has previously considered similar concepts serious and feasible enough to warrant the considerable time and expense of multiple patent and trademark applications.

As a result, especially combined with the USPS' unlawful response to my FOIA request, there is a strong inference that my proposal is in fact feasible; there is evidence of evidence readily available to the PRC but not produced for the record; and no material evidence whatsoever on the record.

Therefore, it would be arbitrary, capricious, unreasonable, an abuse of discretion, and unwarranted by any facts for the PRC to deny my proposal. Accordingly, the PRC *must* obtain the evidence available to it *before* making any determination on how to proceed with my proposal.

Statutory mandate for PRC review of merits

In addition to the basic requirement that the PRC's administrative discretion not be arbitrary or devoid of reasonable basis on fact, the PAEA established clear statutory

mandates for the PRC's decision on this matter.

[39 USC 3642\(b\)](#) states that "[a]ll determinations by the Postal Regulatory Commission¹⁶ under [3642(a)] *shall* be made in accordance with the following criteria" (emphasis added); (b)(3) says that "In making any decision under this section, due regard shall be given to (A) the availability and nature of enterprises in the private sector engaged in the delivery of the product involved; (B) the views of those who use the product involved on the appropriateness of the proposed action; and (C) the likely impact of the proposed action on small business concerns (within the meaning of section [3641\(h\)](#))."

Similarly, [39 CFR 3020.52](#) states that the relevant criteria for a request — which, by implication, the PRC must *also* consider on a rational, fact-based basis — include "each requirement of [39 USC 3622\(d\)](#)"; "the objectives [39 USC 3622\(b\)](#), taking into account the factors of [39 USC 3622\(c\)](#)"; "whether or not [the product] is covered by the postal monopoly, as reserved to the Postal Service under [18 USC 1696](#) subject to the exceptions set forth in [39 USC 601](#)"; "the availability and nature of enterprises in the private sector engaged in the delivery of the product"; "the views of those who use the product on the appropriateness of the proposed modification"; and "the likely impact of the proposed modification on small business concerns".¹⁷

The PRC's duty to consider these matters is not the same as a requirement to schedule a "merits conference". A merits conference, like a hearing on the record, is a more formal proceeding, and falls under a different section of the APA. The requirement at this stage of proceedings is lesser (i.e. it does not invoke the additional "substantial evidence" requirement for formal proceedings under [5 USC 706\(2\)\(E\)](#)).

Nevertheless, the PRC *must* consider the merits of all of the above questions, under the minimum standards set forth in [5 USC 706\(2\)](#).

¹⁶ Note that the statute is completely unambiguous in dictating that it is the PRC, not the USPS, that has the *exclusive* authority and mandate to make such determinations.

¹⁷ [Judulang v. Holder, 132 S.Ct. 476 \(2011\)](#) "agency action must be based on non-arbitrary, 'relevant factors.'"

Illegality of [39 CFR 3020.55\(a\)](#)

In its rulemaking [RM2007-1](#), [order 43](#), the PRC created [39 CFR 3020.55\(a\)](#), which provides in part that the PRC may "[a]pprove [a] request ... only to the extent the modification is consistent with the position of the Postal Service".

This additional caveat giving the USPS *veto power over all requests* is discussed only in PRC [order 26](#), page 97 paragraph 4033: "It would be impractical to proceed with a request that was operationally not feasible for the Postal Service to implement, or inconsistent with Postal Service policies and goals. With this in mind, if the proposed modification is in compliance with statutory provisions and Commission rules, the Commission may approve the modification without further proceedings, but only to the extent that the request is consistent with the Postal Service's views."

This rule is an enactment of [39 USC 3642](#), which says only that the Commission should consider the relevant *statutory criteria* when determining whether to approve a request.

[Order 26](#) gave no legal basis whatsoever for granting any deference to the USPS *greater* than the considerations enumerated in title 39. Its stated concerns — feasibility and consistency with the USPS' (statutorily dictated) goals — are already considerations present in the US Code. The USPS' mere *views* are not.

As has been clearly evident in this proceeding, the *de facto* position of the USPS is to oppose the PAEA's grant of power to individual users of the mails — i.e., that unless the USPS itself proposes a change, it should not even be seriously considered. Neither this position, nor any deference to it by the PRC, is justified in or authorized by any statute.

Furthermore, it is unconstitutional for a regulatory agency to delegate *any* legislative or rulemaking authority to the entity it regulates. Giving the USPS *any* authority over the PRC's decisions, let alone unilateral veto power over all proposed changes to the MCS (a function *expressly* delegated by Congress to the PRC), is a dereliction of the PRC's duty

to regulate and an unlawful delegation of authority. It is also a direct violation of [39 USC 503](#), which says that the PRC's "rules, regulations, procedures, and actions *shall not be subject to any change or supervision by the Postal Service*" (emphasis added).

As such, unless the PRC clearly declares that "the position of the Postal Service" (as used in [39 CFR 3020.55\(a\)](#)) means merely the requirements and goals expressed in [39 USC 3622\(b-d\)](#), [39 USC 3020.52\(a-h\)](#), [39 USC 3642\(b\)](#), [39 USC 101](#), etc — and that it in no way includes a mere argument, "position", or "view"; nor any *de facto* veto power — the PRC both exceeded and abused its discretion in implementing [39 CFR 3020.55\(a\)](#), and the additional caveat therein is unlawful and void *ab initio*.

Difference in evidentiary burden, and proposals of new products

Commenter PostCom is correct that [39 CFR 3020.30](#) and [39 CFR 3020.50](#) have identical language. However, it is incorrect in equating the two.

As the PRC observed in [Order 26](#), page 97, paragraph 4031, a user of the mail does not typically have access to the same information as does the USPS. Indeed, that has become the central issue of this proceeding. The USPS has refused to disclose information that is clearly material to my proposal, which can be reasonably inferred to be unfavorable to their claims, and which I do not have access to.

PostCom is also correct that, in principle, "as the Postal Service will bear the burden of establishing, offering, and administering the new product", the USPS should be accorded substantial weight — but not to their mere *views* (of "not invented here"), nor even to the USPS' managerial preferences for prioritizing one product over another. Rather, such weight can only be placed on *actual evidence* presented by the USPS (in a fashion that does not omit relevant evidence contrary to their desired position) as to whether a proposed product is feasible, would fulfill the statutory criteria and goals, etc.

As discussed above, PostCom is simply without any foundation in law in asserting that

proposals for new products should be given a lesser standing than modifications of existing products. [39 USC 3642](#)'s title even *begins* with the words "new products"; a significant part of Congress' intent (as has been documented in repeated Congressional hearings asking the USPS to produce new ideas to improve its business) is to push the USPS to innovate. PostCom and the USPS argue instead for stagnation; for rejection of new ideas merely because they would (naturally) entail *doing something new*.

PAF's purpose is to serve the mail-using *public* with more privacy and convenience — not PostCom's financial interests. Every ordinary person to whom I have described PAF has wanted to have it, for the reasons described in my [original](#) and [amended](#) proposals.

As the Public Representative [commented \(2013-11-18\)](#): "This Request was filed as a means for an individual, with limited resources, and with limited experience in interacting with the Postal Service, to present an innovative idea for a new postal product to the Postal Service. ... Filing a request in this manner should alert the Postal Service that it is not doing enough to be open to ideas presented by individuals, and to make available avenues for these individuals to discuss new ideas. Unlike mailers who interact with the Postal Service on a daily basis, individuals generally do not have access to decision makers at the Postal Service. ...

The Public Representative's concern in this docket is the development of a process which allows entities from outside the Postal Service to present new ideas for the Postal Service's consideration.¹⁸ This may require a new openness on the part of the Postal Service. The Postal Service needs to listen to externally generated proposals, and assign appropriate resources to ensure that all proposals are given serious consideration... The Postal Service, as a business, will not move forward if it limits itself to only consider internally conceived product ideas. ... [Rejecting this request would have a] chilling effect ... on individuals presenting ideas on potential new products to the Postal Service."

¹⁸ Of course, it is the PRC — *not* the USPS — to whom new ideas for postal products must legally be presented, and which has the *sole* authority to determine the merits of and approve such ideas.

Conclusion

My proposal for Private Address Forwarding is, indeed, a proposal for a *new* product, "not a variation on an existing product or a new promotion that simply applies well-established principles to a different postal service. Rather, it represents an entirely new method of interfacing with postal customers."¹⁹ I choose to take that as a compliment on the innovative nature of my proposal, as that is what I intended it to be.²⁰

Unfortunately, due to the USPS' complete lack of cooperation, there is no current evidence whatsoever on which the PRC can make a non-arbitrary decision in this matter. However, there *is* evidence of evidence that the PRC could easily obtain — a fact which the PRC cannot lawfully ignore.

Therefore, as discussed above, the Commission has only one lawful choice here: to initiate further proceedings that provide discovery adequate to substantiate a reasonable determination of at least the initial merits of my proposal (as amended).

I hope that once more evidence comes to light, the Commission and other commenters will have a more reasonable basis for discussing the merits of my proposal — and that the USPS will reconsider their current adversarial stance and choose instead to *collaborate* with proponents of innovative new ideas for postal services.

Sincerely,
Sai
Petitioner

usps@s.ai
+1 510 394 4724
PO Box 401159
San Francisco, CA 94110

Attachments: correspondence with USPS FOIA office re. 2014-FPRO-000573

¹⁹ [PostCom's comments, 2013-11-18](#)

²⁰ Of course, PostCom likely intended an opposite connotation.

From:
Sai
usps@s.ai
+1 510 394 4724 phone
+1 206 203 2827 fax
PO Box 401159
San Francisco, CA 94110

To:
United States Postal Service:
a) Randy S. Miskanic, Vice President,
Secure Digital Solutions
b) Manager Records Office

Submitted via <https://pfoiapal.usps.com>

**Expedited FOIA Request for USPS documents related to
Private Address Forwarding and PRC docket MC2013-60**

October 18, 2013

On October 16, 2013, the USPS submitted a reply to PRC order 1838¹ in the pending PRC docket #MC2013-60 about my proposal for Private Address Forwarding.

The USPS' reply, and subsequent conversation with its attorney Michael Tidwell, indicated that the USPS has considered multiple similar proposals in the past dating back as far as 2001, "either as a discrete product concept or as part of a larger suite of potential services"², as well as "other concepts in [the USPS'] product development pipeline" including:

1. Patent #7,295,997, in which merchants generate "[l]abel information [e.g.] a random number ... to identify the customer [without] includ[ing] the customer's name or address information" and "the shipper may read ... the label to determine the customer's name and address, apply [a] new label that has the customer's name and address to the package, and ship the package to the customer ... [so that] the customer's information remains anonymous from the merchant."
2. Patent application 20120011068 ("Mail My Way"), in which "a 'virtual address' or 'vanity address' is arbitrary character data defined by a mail recipient that is other than a physical address or mailing address of the customer ... for use in lieu of their

¹ <http://prc.gov/Docs/88/88005/USPS.Reply.Ord.1838.pdf>

² all quotes are from the USPS reply to Order 1838, *supra*

... physical address"

3. Trademark application 8600747 ("Digital License Plate"), which concept includes "providing authentication of personal identification, secure storage of personal information, and encoding of identification information on valuable documents and products"

This letter is a formal FOIA request for all documents related to these and similar proposals (including Private Address Forwarding itself), including but not limited to:

1. investigations of "availability of technology, operational feasibility, associated costs, potential demand marketability, [and/or] policy implications" of such proposals
2. the "direction [and/or] prioritization of [] pre-decisional product development investigations" of such proposals
3. feasibility or technical standards for record storage systems for such proposals and/or for PO Box holder identities
4. "procedures in place that protect the identities and street addresses of individuals" and associated "records system"(s)
5. the "relative rankings of DLP" and other such proposals with respect to unrelated proposals contemplated by the USPS

To the extent that such documents are available in digital form (e.g. PDF, text, images, etc), please deliver them as such via email, FTP, or similar method. To the extent that the documents are only available in paper form, please send them either by scan and email, or by fax, as is most convenient.

If you believe that any of the requested documents are exempt from disclosure, please provide a list of what documents are within the requested class but exempt, together with an explanation of why they are exempt.

If you believe that any of the requested documents are insufficiently described, please fulfill the remainder of this request and contact me by email to resolve any insufficiency. If you

believe that any of the requested documents are already public, please point to where they may be found online.

I request fee waiver for this request. All responsive documents will be filed with the PRC docket (and thus published publicly), and directly benefits the public and the PRC in educating them on issues that the USPS has explicitly argued in its Reply to be directly relevant to the outcome of this proceeding. I expect to gain no commercial benefit whatsoever from this disclosure, nor from the proceeding itself.

If fee waiver is denied, I am willing to pay up to \$50 for processing of this request. While I may be willing to pay more, if it will cost more to complete, please contact me to explain the costs, and complete as much as can be done for \$50.

Because this request directly impacts an ongoing PRC proceeding and there is an urgency to inform the public regarding the USPS' activity in this proceeding due to the PRC's current reply comment deadline of 2013-11-13 (before which I and other stakeholders would need time to read and compose a response, based in part on any responsive documents), please process this request in an expedited manner.

Sincerely,
Sai

RECORDS OFFICE



November 6, 2013

Sai
PO Box 401159
San Francisco, CA 94110

RE: FOIA Case No. 2014-FPRO-00057

Dear Postal Customer:

This responds to your Freedom of Information Act (FOIA) requests, dated October 18, 2013 for access to Postal Service records.

We consider that you are within the category of "other requesters" as defined by Postal Service FOIA fee regulations. This category applies to requesters who are not commercial use requesters, educational or scientific requesters, or news media requesters.

Regarding fees under the FOIA, fair and equitable fees are established to permit the furnishing of records to the public, while recovering costs incurred by the Postal Service. The cost is calculated in accordance with our fee regulations at section 265.9 of Title 39, Code of Federal Regulations, which permit us to charge requests of "other requesters" search time at the rate of \$32.00 per hour and 15 cents per page for duplication, after providing the first two hours of search time and the first 100 pages at no charge. In addition, our regulations require that requesters be notified in advance of all costs expected to exceed \$25.00 if they have not indicated their willingness to accept costs that may be incurred in processing their request.

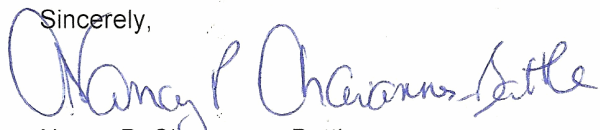
The cost to process your request is estimated to be a *minimum* of \$832.00 for search time (28 hours at a cost of \$32.00 per hour minus 2 hours). In addition to that cost, 15 cents per page will be assessed for duplication (the first 100 pages are provided at no charge). There may be additional charges depending on actual services provided in the processing of this request.

Because the cost of processing your request will exceed \$250.00, we will require at least 50 percent advance payment with your written agreement to accept any assessable costs incurred. Please submit your check or money order in the amount of \$416.00 made payable to the "U. S. Postal Service." We must caution you that you are liable for the fee even if certain portions of the requested records are withheld in accordance with our regulations. Upon receipt of your deposit and written agreement to accept costs, we will proceed with processing your request and provide an estimate of the time frame for our response.

As an alternative, which could be less expensive, and could produce documents more timely to you, we suggest you consider narrowing the scope of your request. If you need assistance in reformulating your request, you may contact me at (202) 268-2030.

We look forward to hearing from you as to how to proceed with your request. If we do not hear back from you within 14 calendar days of this letter, we will assume you do not wish to incur costs to process your request, and we will close out this request.

Sincerely,



Nancy P. Chavannes-Battle
Consumer Research Analyst



Sai . <saizai@gmail.com>

RE: FOIA Case 2014-FPRO-0057

Sai <usps@s.ai>

Sat, Nov 23, 2013 at 12:37 PM

To: nancy.p.chavannesbattle@usps.gov

Cc: david.c.belt@usps.gov, "WACLAWSKI, JAMES X" <james.waclawski@prc.gov>

` Dear Ms. Chavannes-Battle -

On November 19th, I left you a voicemail message, as requested in your letter, regarding your response to my FOIA request (see both attached), explaining that:

1. you failed to respond to my public interest fee waiver request; and
2. you failed to respond to, or to respect, my request for electronic format (not paper) documents, e-mail response, and minimum cost (i.e. electronic) duplication.

These failures violate Federal law. See (among others):

5 U.S.C. § 552(a)(4)(A)(iii) & 39 CFR 265.9(g)(3) - shall determine public interest exemption before claiming fees

5 U.S.C. § 552(a)(3)(B), 39 CFR 265.9(h)(3) - shall provide in format requested if available and shall charge no more than actual costs (n.b. there is no such thing as a "per page" actual cost to transmit electronic documents)

OMB Fee Guidelines, 52 Fed. Reg. at 10,018 - least cost possible

I also asked you to explain how my request could be narrowed by category, such that the costs might be reduced, as your letter did not explain its basis for calculating 28 hours of "search time", nor how that time might be reduced while fulfilling as much of my request as possible.

I have not received any response whatsoever to my voicemail, so I am following up by e-mail.

Please note that because there has been no "determination" within the 20-day statutory requirement, I am under no obligation to make any administrative appeal, and have the right to *immediately* file suit in the DC Circuit Court. See e.g. CREW v. FEC, DC Court of Appeals 12-5004 - http://www.fec.gov/law/litigation/crew_ac_order.pdf.

If I do not receive an adequate explanation and response regarding all three of the above issues, by e-mail, by December 5th, 11 pm Eastern time, I will have to assume that the USPS is intentionally refusing to obey the FOIA's requirements, and will have no choice but to

- a) file suit for declaratory, injunctive, and cost recovery relief, and

b) file copies of my request, your response, and my civil complaint in PRC proceeding MC2013-60, as evidence of bad faith and as evidence that the USPS is deliberately withholding evidence that would benefit my argument (per the absent witness rule, 29 Am. Jur. 2d Evidence § 257), consistent with its entire pattern of response in that proceeding to date.

I am sending this email as a courtesy and good faith attempt to resolve the matter without litigation, and to give you a more than adequate time to respond (even though I am under no obligation to extend any further time).

I hope that the USPS' failures in this matter were a genuine mistake, and that you are willing to comply voluntarily with the requirements of the FOIA and 39 CFR 265.

I look forward to receiving your prompt response, *by e-mail*, before December 5th, 11pm Eastern.

Sincerely,
Sai

/cc David C. Belt, Office of the General Counsel, USPS
/cc Jim Waclawski, Public Representative on MC2013-60, Postal
Regulatory Commission

2 attachments



2013-10-18 FOIA request for documents related to PAF.pdf
118K



2013-11-06 USPS response re MC2013-60 FOIA request.pdf
2397K



November 25, 2013

Sai
PO Box 401159
San Francisco, CA 94110

RE: FOIA Case No. 2014-FPRO-00057

Dear Postal Customer:

This responds to your November 18, 2013 telephone call to our office and subsequent email on November 23, 2013 regarding the fee estimate you received in response to your Freedom of Information Act (FOIA) request, dated October 18, 2013. You requested records pertaining to five listed items in connection with private address forwarding and PRC docket MC2013-60.

In your email you state that your fee waiver request was not responded to and that your request for electronic format (not paper) documents was not addressed. It is noted that in your initial request you ask for expedited processing. We apologize for the oversight in not addressing these matters in the fee estimate letter dated November 6, 2013.

In order to be granted expedited processing of a FOIA request, you must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of your knowledge and belief.

Compelling need exists if either of the following applies: 1) failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or 2) in the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity. We do not feel that you have demonstrated how either of these situations applies to your request. Accordingly, your request for expedited processing has been denied. Your request will be processed based in the order in which it was received, or in other words, on a first-in, first-out basis.

In response to your request for a waiver of fees, we decline your request for a fee waiver. You state in your letter that you will make the responsive records available to the public in connection with PRC docket MC2013-60.

Postal regulations governing the waiver of fees (section 265.9(g) (3) of Title 39, Code of Federal Regulations) permit waiver of a fee when it is determined that furnishing the records is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the federal government and is not primarily in the commercial interest of the requester.

The waiver request must describe the following: how the information will be used; to whom it will be provided, including the public; how the public is to benefit from the disclosure; any personal or commercial benefit that the requester expects from disclosure; and the intended user's identity, qualifications, and expertise in the subject area (see Section 4-2.3, AS353 Handbook).

Your fee waiver request did not include all of the required information. In particular, you have not demonstrated your qualifications and expertise in the subject area, or the ability and intention to disseminate the information to the public. Requesters who make no showing of how the information would be disseminated, other than through passively making it available on a website, do not meet the burden of demonstrating with particularity that the information will be communicated to the public.

With respect to the estimated cost for processing your request, we note that you did not limit the search for records to a particular department or office. Based on the subject matter of your request, we conducted preliminary searches for records at Postal Service Headquarters. This preliminary search found that responsive records may exist within two Headquarters departments - Product Information and the Office of the General Counsel. The fee estimate is for the time it will take to search for responsive records within these two departments (one hour by Product Information and 27 hours by the Office of the General Counsel). As an alternative, which could be less expensive, and could produce documents more timely to you, you could limit the search of documents to a particular department or to a specific report or document type.

With respect to duplication fees, provided you are willing to pay for the search fees, we are unable to estimate the duplication fees that may be incurred in processing your request until the search for records has been completed. As stated in my prior letter, the cost for hard copy duplication is at the rate of 15 cents per page after the first 100 pages which are provided at no charge. We understand that you have asked to be provided copies of responsive records in electronic format. We will comply with your request to be provided records in electronic format if able to do so.

We look forward to hearing from you as to how to proceed with your request. If we do not hear back from you within 14 calendar days of this letter, we will assume you do not wish to incur costs to process your request, and we will close out this request.

You have the right to appeal the denial of your request for expedited processing and your fee waiver request by writing to the General Counsel, U.S. Postal Service, Washington, D.C. 20260-1100, within 30 days of the date of this letter. The letter of appeal should include statements concerning this response, the reasons why it is believed to be erroneous, and the relief sought, along with copies of the original request letter, this letter, and any other related correspondence.

If you need assistance in reformulating your request, you may contact me at (202) 268-2030.

Sincerely,

Nancy P. Chavannes-Battle

Nancy P. Chavannes-Battle
Consumer Research Analyst



Sai . <saizai@gmail.com>

RE: FOIA Case 2014-FPRO-0057

Sai <usps@s.ai>

Mon, Nov 25, 2013 at 7:31 PM

To: "Chavannes-Battle, Nancy" <nancy.p.chavannesbattle@usps.gov>, "Belt, David C - Washington, DC" <David.C.Belt@usps.gov>

Cc: "WACLAWSKI, JAMES X" <james.waclawski@prc.gov>

Dear Ms. Chevannes-Battle & Mr. Belt:

Thank you for your response to my FOIA request for expedited processing, public interest fee waiver, digital format records, and an explanation of how search might be tailored.

1. Expedited processing

a) There is urgency, given that the records I have requested directly relate to an ongoing Postal Regulatory Commission proceeding, to which response comments are due on December 20th. The records are urgently necessary to inform the public about actual federal government activity, without which it is difficult or impossible to comment on PRC proceeding MC2013-60 on an informed basis.

b) I am primarily engaged in disseminating information, through multiple means, including blogging, PRC and other agency filings, speaking at conferences (including the World Forum for Democracy at the Counsel of Europe which I am currently attending as an invited discussant), etc. The Supreme Court has determined that bloggers have the same rights as any other journalists, and I claim that right.

With respect to this FOIA, it is prima facie evidence of public dissemination that the results will be filed on the PRC record.

2. Fee waiver for public interest

a) As I said in my original request, the information will be used to inform the public and the Postal Regulatory Commission about ongoing proceeding MC2013-60. The public and PRC will benefit from the disclosure by better understanding the USPS' previous work in this area, which is critical to being able to make an informed decision or comment on MC2013-60.

"The public" here includes Mr. Waclawski, Public Representative of the PRC for MC2013-60, who is copied on this email and will be given a copy of all responsive records.

Again as above and in my original request, it will be published in the

PRC docket for MC2013-60 (in addition to my website), which is _prima facie_ evidence of public dissemination.

b) As I said in the original request, I do not expect to gain any personal or commercial benefit.

c) I have already given my identity in my original request letter.

I am the proponent of MC2013-60, and therefore am _definitionally_ qualified on this subject, as it is my own invention (albeit one that is similar to inventions made in parallel by the USPS).

I have many years of experience in security, web development, privacy, and other technology, which is directly relevant to my MC2013-60 proposal. See <http://s.ai/work> for my professional background.

3. Partial fulfillment

To the extent that you can fulfill my request with a shorter search within the Product Information division, I request that you do so — while completely reserving my right to fee waiver and to search of other records, including those of the Office of the General Counsel.

4. Appeal

To the extent that Ms. Chevannes-Battle's letter (attached) constitutes an (untimely) adverse determination by the USPS on any point of my FOIA, I hereby appeal it to the USPS General Counsel's office, whose representative Mr. Belt I have copied on this email.

I note however that because, as admitted in the second letter, you did *not* make a timely determination on any of the above issues, I "appeal" only out of politeness, not legal obligation, and do not waive any of my rights by doing so.

I have already fulfilled my duty to exhaust administrative remedies, am not legally required to make any administrative appeal, and reserve my already existing right to directly sue the USPS in the DC District Court regardless of the USPS General Counsel's response or lack thereof.

All of the points 1-3 above were included in my original request. As such, there was no basis whatsoever for failing to make a timely determination on any of the issues mentioned in this email. I note also that the determination of expedited processing is subject to a 10 day response requirement, and the FOIA in general to a 20 day response requirement, neither of which were met.

Again, I request that response be by e-mail.

Sincerely,
- Sai

3 attachments



2013-10-18 FOIA request for documents related to PAF.pdf
118K



2013-11-06 USPS response re MC2013-60 FOIA request.pdf
2397K



2013-11-25 FOIA 2014-FPRO-0057 fee estimate letter 2.pdf
90K



November 27, 2013

Sai
PO Box 401159
San Francisco, CA 94110

RE: FOIA Case No. 2014-FPRO-00057

Dear Mr. Sai:

This is in reference to your communication, dated November 25, 2013 regarding your Freedom of Information Act (FOIA) request - FOIA Case No. 2014-FPRO-00057.

We interpret your email letter as a modification of your FOIA request. Specifically, you have asked that we limit the search for responsive records to the Product Information department. I have referred your request to that office and asked that they conduct a search for responsive records. We will be in further contact with you once the search for records has been completed.

We have referred your FOIA appeal concerning the denial of your request for expedited processing and fee waiver request to the Office for General Counsel for attention and direct response to you.

Sincerely,

Nancy P. Chavannes-Battle

Nancy P. Chavannes-Battle
Consumer Research Analyst



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 12, 2013

Sai
P.O. Box 401159
San Francisco, CA 94110-1159

Re: Freedom of Information Act Appeal No. 14-023
FOIA Case No. 2014-FPRO-00057

Dear Sai:

This responds to your November 25, 2013, email message that was directed to the Postal Service Records Office and David Belt of the General Counsel's Office.¹ We interpret your message as an appeal of the Records Office's determination, regarding the above referenced Freedom of Information Act (FOIA) request, to deny your requests for expedited processing and a fee waiver.

Expedited Processing

Section 265.7(g)(1) of 39 Code of Federal Regulations sets out the applicable criteria for the agency's consideration of a request for expedited processing. Specifically, it states that the Postal Service shall grant a request for expedited processing "when the requester demonstrates compelling need." The regulation provides that "compelling need" exists if:

- (1) Failure of the requester to obtain the requested records on an expedited basis "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual"; or
- (2) There is "an urgency to inform the public concerning actual or alleged federal government activity" in instances where the requester is "primarily engaged in disseminating information."

Moreover, Section 265.7(g)(2) provides that the requester must "provide information in sufficient detail to demonstrate compelling need" and certify the statement "to be

¹ In the future, please direct any electronic correspondence regarding FOIA appeals to Mr. Derrick L. Myers (Derrick.L.Myers@usps.gov) of Federal Requirements, the section of the General Counsel's Office that is responsible for considering all administrative FOIA appeals.

true and correct to the best of the requester's knowledge and belief."

After careful review and consideration of your appeal, this Office has concluded that you have failed to provide sufficient information to demonstrate the requisite "compelling need" to warrant the granting of your request for expedited processing. Accordingly, this Office is upholding the decision of the Records Office in this matter.

Fee Waiver

Under the FOIA, the Postal Service may charge fees for costs associated with processing a FOIA request. The fees are calculated in accordance with regulations set out in 39 C.F.R. § 265.9. The requester is responsible for the payment of all fees related to processing the request. Postal Service regulations direct that "the most efficient and least costly method[]" shall be used "when complying with requests for records." 39 C.F.R. § 265.9(a).

As noted in the Records Office's November 25, 2013, response to you, a "public interest" fee waiver is appropriate where the disclosure of requested records is likely to significantly contribute to the public understanding of the operations or activities of the Postal Service, and release of the records is not primarily in the commercial interest of the requester. See 5 U.S.C. §552(a)(4)(A)(iii); 39 C.F.R. § 265.9(g)(3). Fee waivers are not proper where the requester seeks information to further a private interest. See Carney v. U.S. Dep't of Justice, 19 F.3d 807, 816 (2d Cir. 1994); McClain v. U.S. Dep't of Justice, 13 F.3d 220, 221 (7th Cir. 1993).

To determine whether disclosure of the requested information is in the public interest, this Office considers the following factors: (1) the relation of the records to the operations or activities of the Postal Service; (2) the informative value of the information to be disclosed; (3) any contribution to an understanding of the subject by the general public likely to result from disclosure; (4) the significance of that contribution to the public understanding of the subject; (5) the nature of the requester's personal interest, if any, in the requested disclosure; and (6) whether the disclosure would primarily be in the requester's commercial interest. See 39 C.F.R. § 265.9(g)(3)(i)-(vi). See also, Section 4-6.3, AS-353 Handbook, "Guide to Privacy, the Freedom of Information Act, and Records Management."

Requests for a fee waiver must: (1) be made with "reasonable specificity," Prison Legal News v. Lappin, 436 F.Supp.2d 17, 26 (D.D.C. 2006); (2) be considered on a case-by-case basis; and (3) should address both of the waiver requirements in sufficient detail for the agency to make an informed decision as to whether it can appropriately waive or reduce the fees in question. Media Access Project v. FCC, 883 F.2d 1063, 1065 (D.C. Cir. 1989). The requester bears the burden of establishing that he or she is entitled to a fee waiver. Friends of the Coast Fork v. U.S. Dept. of Interior, 110 F.3d 53, 55 (9th Cir. 1997); In Def. of Animals v. NIH, 543 F.Supp.2d 83, 108 (D.D.C. 2008).

In the instant case, this Office has not been presented with sufficient evidence demonstrating that the release of the particular records you have requested would serve the public interest. Based on the statements you have submitted, it appears that the

requested records would primarily be used within the limited context of an administrative hearing in which you have an interest. Accordingly, there is no basis to warrant a fee waiver. See Brunsilus v. DOE, No. 07-5362, 2008 U.S. App. LEXIS 15314, at *2 (D.C. Cir. 2008) (per curiam) (emphasizing that "[a]ppellant's indigence and his private litigation interest are not valid bases for waiving fees under FOIA"). Therefore, this Office upholds the Records Office's decision to deny you a fee waiver.

Conclusion

With respect to your expedited processing and fee waiver requests under the Freedom of Information Act, this is the final decision of the Postal Service. You may seek judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district where the alleged records are located, or in the District of Columbia.

We also note that as an alternative to litigation, you may wish to utilize the services of the Office of Government Information Services (OGIS), National Archives and Records Administration. OGIS was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

For the General Counsel,



Christopher T. Klepac
Chief Counsel
Federal Requirements

cc: Ms. Eyre
Ms. Chavannes-Battle